

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WANXIA LIAO,

Plaintiff,

v.

RONALD QUIDACHAY; PAUL ALVARADO;
MAURA RAMIREZ; LAURENCE KAY; TIMOTHY
REARDON; PATRICIA SEPULVEDA; MARIA
RIVERA; RONALD GEORGE; SAN FRANCISCO
SUPERIOR COURT; and STATE OF
CALIFORNIA,

Defendants.

No. C 05-1888 CW

ORDER GRANTING
DEFENDANTS'
MOTION TO DISMISS
AND DENYING
PLAINTIFF'S
MOTIONS FOR STAY,
REMOVAL OF
COUNSEL, REQUEST
FOR TELEPHONIC
APPEARANCE AND TO
SHORTEN TIME

Defendants Superior Court of California for the County of San Francisco (the Superior Court), Judge Ronald Evans Quidachay, Judge Paul H. Alvarado and Maura Ramirez (collectively, Superior Court Defendants) move pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss pro se Plaintiff Wanxia Liao's complaint against them.¹ Plaintiff opposes the motion, and also moves for a stay of this action, for removal of Kay Yu, counsel for Superior

¹The purported proof of service filed by Plaintiff shows that she attempted to serve Superior Court Defendants by registered mail. Registered mail is not a proper form of service. Fed. R. Civ. P. 4(e), (j); Cal. Civ. Proc. Code § 415.30. However, Superior Court Defendants do not move to dismiss on those grounds. Nothing in the record indicates that Plaintiff has served Defendants Laurence Kay, Timothy Reardon, Patricia Sepulveda, Maria Rivera, Ronald George or the State of California, and none of these Defendants has made an appearance.

1 Court Defendants, for approval of a telephonic appearance and to
2 shorten time on these motions. The matters were submitted on the
3 papers. Having considered all of the papers filed by the parties,
4 the Court GRANTS Superior Court Defendants' motion to dismiss
5 (Docket No. 15). The Court DENIES Plaintiff's motions for a stay,
6 for removal of counsel, for telephonic appearance and to shorten
7 time (Docket No. 22).

8 BACKGROUND

9 The following facts are all taken from Plaintiff's First
10 Amended Complaint (FAC). Plaintiff, a Canadian citizen, brought a
11 civil rights lawsuit against James Cahill, a former professor at
12 the University of California, that was heard by the Superior Court.
13 Plaintiff alleges generally that Superior Court Defendants engaged
14 in a cover-up for Mr. Cahill and intentionally sabotaged her case
15 against him. She also alleges that Defendant Ramirez, a court
16 clerk, cooperated with Judge Quidachay and Judge Alvarado and
17 forged court documents for the purpose of having Plaintiff declared
18 a vexatious litigant. Plaintiff seeks declaratory and injunctive
19 relief and monetary damages on her claims for violation of 42
20 U.S.C. § 1983 and for intentional infliction of emotional distress.

21 Plaintiff filed her complaint against Mr. Cahill and the
22 Regents of the University of California in the Superior Court on
23 May 9, 2002. On May 19, 2003, Judge Quidachay issued an order
24 sustaining the defendants' demurrer, with leave to amend the claims
25 against Mr. Cahill to plead that his absence from California tolled
26 the applicable statute of limitations. On May 29, 2003, Plaintiff
27 "served a Notice of Abandonment of the Whole Action on the

1 Defendants counsel" stating that she believed Judge Quidachay was
2 biased against her because his order did not "provid[e] any reason
3 and only allowed [Plaintiff] the specific leave to amend in that
4 the permitted amendment was in fact untenable." FAC ¶ 20. In this
5 notice, Plaintiff also stated her intention to refile the action in
6 an alternative forum. Apparently, this notice was filed on June 2,
7 2003.

8 On June 19, 2003, Mr. Cahill moved to dismiss Plaintiff's
9 State court action on the grounds that she had failed to amend her
10 complaint as ordered. On June 20, 2003, Judge Alvarado dismissed
11 Plaintiff's entire action with prejudice. Plaintiff claims that
12 because she had filed her "Notice of Abandonment of the Whole
13 Action," Judge Alvarado, in dismissing her case, "acted in complete
14 absence of jurisdiction." FAC ¶ 26. Plaintiff appealed to the
15 California Court of Appeal, which dismissed the appeal as untimely.
16 Plaintiff also filed a civil rights case against Mr. Cahill in
17 federal district court. That case was dismissed on grounds of res
18 judicata.

19 On February 20, 2004, Plaintiff filed a complaint in Superior
20 Court against both the Superior Court and Mr. Laurenson, counsel
21 for Mr. Cahill, seeking revocation of Judge Quidachay and Judge
22 Alvarado's orders. Judge Quidachay sustained a demurrer in that
23 case without leave to amend, and later denied Plaintiff's
24 subsequent application for revocation of the order.

25 On August 27, 2004, Mr. Laurenson filed a motion to have
26 Plaintiff declared a vexatious litigant based on her attempts to
27 continue litigating the claim. On October 20, 2004, Judge
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1 Quidachay granted the motion, and required Plaintiff to furnish
2 security in order to pursue her litigation against the Superior
3 Court and Mr. Laurenson. Plaintiff acknowledges that Judge
4 Quidachay "may have an excuse" for this ruling, based on "some
5 misunderstandings or confusions cause by the Summons on 1st
6 Amended." FAC ¶ 28. Plaintiff appears to allege that Ms. Ramirez
7 fraudulently issued a summons to Mr. Laurenson based on an amended
8 complaint, although he was no longer a proper party to the State
9 case. FAC ¶¶ 28-30, 34. Plaintiff asserts that Ms. Ramirez issued
10 the summons to Mr. Laurenson to trap Plaintiff into being
11 prosecuted as a vexatious litigant. Plaintiff also objects to the
12 fact that Judge Quidachay, in finding her to be a vexatious
13 litigant, considered two actions filed in Canada, and concludes
14 therefore that his order was issued "in complete absence of the
15 most fundamental jurisdiction." FAC ¶ 31.

16 On October 25, 2004, Plaintiff filed in Superior Court a
17 "Notice of Dismissal of Entire Action without Prejudice as against
18 Defendant San Francisco Superior Court only." FAC ¶ 22. She also
19 moved for reconsideration of Judge Quidachay's October 20, 2004
20 order, explaining that the confusion caused by the allegedly
21 improper Summons was "induced by Court Supervisor Ramirez's fraud."
22 FAC ¶ 28. The motion for reconsideration was denied. On December
23 2, 2004, Judge Quidachay granted Mr. Laurenson's motion to dismiss
24 the case for failure to furnish the required security.

25 Plaintiff states that, because she had no prior dealings with
26 Judge Alvarado and Judge Quidachay, racial discrimination is "the
27 only reason possible" for their acts. FAC ¶ 33.

1 Plaintiff filed a timely appeal of Judge Quidachay's dismissal
2 with the California Court of Appeal. Defendants Reardon, Sepulveda
3 and Rivera, all judges on the Court of Appeal, denied the appeal in
4 an unpublished opinion. Plaintiff's petition for rehearing was
5 dismissed by Defendant Judge Kay. Plaintiff currently has an
6 unspecified "request" pending before Defendant Ronald George, Chief
7 Justice of the California Supreme Court. FAC ¶ 23.

8 LEGAL STANDARD

9 A motion to dismiss for failure to state a claim will be
10 denied unless it is "clear that no relief could be granted under
11 any set of facts that could be proved consistent with the
12 allegations." Falkowski v. Imation Corp., 309 F.3d 1123, 1132 (9th
13 Cir. 2002) (citing Swierkiewicz v. Sorema N.A., 534 U.S. 506
14 (2002)).

15 A complaint must contain a "short and plain statement of the
16 claim showing that the pleader is entitled to relief." Fed. R.
17 Civ. P. 8(a). "Each averment of a pleading shall be simple,
18 concise, and direct. No technical forms of pleading or motions are
19 required." Fed. R. Civ. P. 8(e). These rules "do not require a
20 claimant to set out in detail the facts upon which he bases his
21 claim. To the contrary, all the Rules require is 'a short and
22 plain statement of the claim' that will give the defendant fair
23 notice of what the plaintiff's claim is and the grounds on which it
24 rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

25 The Court, however, "is not required to accept legal
26 conclusions cast in the form of factual allegations if those
27 conclusions cannot reasonably be drawn from the facts alleged."

1 Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir.
2 1994); Baugh v. CBS, Inc., 828 F. Supp. 745, 752 (N.D. Cal. 1993).

3 DISCUSSION

4 I. Immunities

5 A. Absolute Judicial Immunity

6 Superior Court Defendants argue that Judge Quidachay and Judge
7 Alvarado are entitled to absolute judicial immunity and therefore
8 the claims against them should be dismissed. Judges and those
9 performing judge-like functions are absolutely free from liability
10 for damages for acts performed in their official capacities.

11 Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc).

12 Judicial immunity from claims for damages generally can be overcome
13 only in two sets of circumstances. First, a judge is not immune
14 from liability for non-judicial actions, i.e., actions not taken in
15 the judge's judicial capacity. See Hyland v. Wonder, 117 F.3d 405,
16 413 n.1 (9th Cir. 1997) (holding that judge may lose protection of
17 judicial immunity when performing administrative act). Second, a
18 judge is not immune for actions, though judicial in nature, taken
19 in the complete absence of all jurisdiction. Mireles v. Waco, 502
20 U.S. 9, 11 (1991). As long as the judge has jurisdiction to
21 perform the "general act" in question, he or she is immune however
22 erroneous the act may have been, however injurious the consequences
23 of the act may have been, and irrespective of the judge's claimed
24 motivation. Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir. 2000)
25 (citing Cleavinger v. Saxner, 474 U.S. 193, 199-200).

26 Plaintiff concedes that the alleged acts by Judge Quidachay
27 and Judge Alvarado were taken in their judicial capacity. However,
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1 she argues that she has sufficiently plead that they lacked
2 jurisdiction to issue orders as they did. In doing so, Plaintiff
3 misconstrues this exception to judicial immunity. Even if Judge
4 Quidachay or Judge Alvarado erred in dismissing Plaintiff's
5 complaints or declaring her a vexatious litigant, e.g. by failing
6 to terminate the entire case without prejudice upon Plaintiff's
7 filing of a "Notice of Abandonment," such "general acts" are still
8 functions that they had jurisdiction to perform. See Harvey, 210
9 F.3d at 1212 (noting that the "'general act' which Judge Hernandez
10 was performing in this case--the issuance of an ex parte order to
11 destroy contraband at the request of the county--is a function that
12 Judge Hernandez has jurisdiction to perform"). As the Supreme
13 Court has explained,

14 A distinction must be here observed between excess of
15 jurisdiction and the clear absence of all jurisdiction over
16 the subject-matter. Where there is clearly no jurisdiction
17 over the subject-matter any authority exercised is a usurped
18 authority, and for the exercise of such authority, when the
19 want of jurisdiction is known to the judge, no excuse is
20 permissible. But where jurisdiction over the subject-matter
is invested by law in the judge, or in the court which he
holds, the manner and extent in which the jurisdiction shall
be exercised are generally as much questions for his
determination as any other questions involved in the case,
although upon the correctness of his determination in these
particulars the validity of his judgments may depend.

21 Stump v. Sparkman, 435 U.S. 349, 356 n.6 (1978) (quoting Bradley v.
22 Fisher, 13 Wall. 335, 351-52 (1872)). The Court does not take as
23 true the FAC's legal conclusions regarding Judge Quidachay and
24 Judge Alvarado's alleged complete lack of jurisdiction to issue the
25 orders they did. In fact, because the Superior Court is a court of
26 general jurisdiction, the exception to judicial immunity based on a
27 complete lack of jurisdiction appears to be inapposite.

1 For this reason, Plaintiff's claims against Judge Quidachay
2 and Judge Alvarado are dismissed. Plaintiff has already included
3 many details in her FAC, and it appears to the Court that any
4 amendment is unlikely to overcome absolute judicial immunity.
5 However, the Court will allow Plaintiff an opportunity to amend her
6 complaint to allege actions that these Defendants have taken that
7 are not protected by absolute judicial immunity.

8 B. Absolute Quasi-Judicial Immunity

9 Superior Court Defendants argue that Ms. Ramirez, a court
10 clerk, is entitled to absolute quasi-judicial immunity and
11 therefore the claims against her should be dismissed.

12 "Court clerks have absolute quasi-judicial immunity from
13 damages for civil rights violations when they perform tasks that
14 are an integral part of the judicial process." Mullis v. United
15 States Bankr. Ct., 828 F.2d 1385, 1390 (9th Cir. 1987). This
16 absolute quasi-judicial immunity extends to "court clerks and other
17 non-judicial officers for purely administrative acts--acts which
18 taken out of context would appear ministerial, but when viewed in
19 context are actually a part of the judicial function." In re
20 Castillo, 297 F.3d 940, 952 (9th Cir. 2002). Here, Plaintiff
21 alleges that Ms. Ramirez fraudulently issued a summons to Mr.
22 Laurenson. The act of issuing a summons is part of the judicial
23 function, and thus Ms. Ramirez is entitled to quasi-judicial
24 immunity for it. Therefore, the Court dismisses Plaintiff's claims
25 against Ms. Ramirez. Plaintiff has already included many details
26 in her FAC, and it appears to the Court that any amendment is
27 unlikely to overcome absolute quasi-judicial immunity. However,

1 the Court will allow Plaintiff an opportunity to amend her
2 complaint to allege actions that Ms. Ramirez has taken that are not
3 protected by absolute quasi-judicial immunity.

4 C. Eleventh Amendment Immunity

5 Superior Court Defendants move to dismiss the claims against
6 Defendant Superior Court on the basis that the Eleventh Amendment
7 to the United States Constitution, which bars the federal courts
8 from entertaining suits against a State by citizens of a foreign
9 State, deprives this Court of subject matter jurisdiction.

10 Superior Court Defendants are correct. See Greater Los Angeles
11 Council on Deafness, Inc. v. Zolin, 812 F.2d 1103, 1110 (9th Cir.
12 1987) ("[A] suit against the Superior Court is a suit against the
13 State, barred by the eleventh amendment."). The statute cited by
14 Plaintiff, California Government Code § 815.2, concerns the
15 liability of State entities for injuries to their employees and is
16 not relevant to this case. Therefore, the Court dismisses
17 Plaintiff's claims against Defendant Superior Court of San
18 Francisco County without leave to amend, but without prejudice to
19 refiling in State court.

20 II. Unserved Defendants

21 Because the deficiencies identified by the Court with respect
22 to Plaintiff's complaint apply equally to the unserved Defendants,
23 including the State of California and judges for the California
24 Court of Appeal and Supreme Court, the Court also dismisses the
25 claims against them. See Silverton v. Dep't of Treasury, 644 F.2d
26 1341, 1345 (9th Cir. 1981) (court may sua sponte dismiss action as
27 to defendants who have not moved to dismiss, where such defendants
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1 are in a position similar to that of moving defendants or where
2 claims against such defendants are integrally related).

3 The dismissal of claims against the State of California is
4 without leave to amend, but without prejudice to refiling in State
5 court. With respect to the unserved State judge Defendants, it
6 appears to the Court that any amendment is unlikely to overcome
7 absolute judicial immunity. However, the Court will allow
8 Plaintiff an opportunity to amend her complaint to allege actions
9 that these Defendants have taken that are not protected by absolute
10 judicial immunity.

11 III. Plaintiff's Motions

12 Plaintiff states that on September 29, 2005, she initiated a
13 "criminal action against some of these Defendants and their counsel
14 Kay Yu to this action by sending a Complaint And Request for
15 Investigation to the Civil Rights Section of the Department of
16 Justice [DOJ] of the United States." Mem. P. & A. in Supp. of Mot.
17 at 1. She asks the Court to stay action in this case pending the
18 outcome of this complaint to the DOJ and to disqualify Ms. Yu from
19 representing Superior Court Defendants. Plaintiff also moves to
20 shorten time on these motions and to appear at the hearing by
21 telephone.

22 Plaintiff's filing of a complaint with the DOJ does not
23 constitute a "criminal action." The authority upon which Plaintiff
24 relies for a stay, Keating v. Office of Thrift Supervision, 45 F.3d
25 322, 324-25 (9th Cir. 1995), is therefore inapplicable. Plaintiff
26 has shown no grounds for either a stay or the disqualification of
27 Ms. Yu, and the Court accordingly denies those requests.

1 Plaintiff's motions to shorten time and for a telephonic appearance
2 are denied as moot.

3 CONCLUSION

4 For the foregoing reasons, Superior Court Defendants' motion
5 to dismiss is GRANTED (Docket No. 15). Plaintiff's motions are
6 DENIED (Docket No. 22).

7 Plaintiff may file a second amended complaint (SAC) if she is
8 able truthfully to amend her allegations to overcome the
9 deficiencies identified in this Order. Any SAC must be filed
10 within twenty days of the date of this Order. It may not include
11 any claims against Defendants Superior Court and State of
12 California.

13 If Plaintiff chooses to file an amended complaint, she must
14 properly serve the SAC and summons on Defendants or ask Defendants
15 to waive service. Fed. R. Civ. P. 4(c), (d). Registered mail is
16 not a proper method of service.

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18 IT IS SO ORDERED.

19 Dated: 10/12/05



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21 CLAUDIA WILKEN
United States District Judge
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